voyage is prevented by the seizure of the cargo as enemy goods, the shipowner should receive the full freight which he would rightfully have earned had not the seizure taken place. *The Fortuna*, Edw. Adm. 56; *The Prosper*, Edw. Adm. 72. See CARVER, CARRIAGE BY SEA, 6 ed., § 556. This line of reasoning would also entitle the claimants here to demurrage for delay caused beyond the time which the original voyage would have consumed. *Cf. The Anna Catharina*, 6 Rob. 10; *The Industrie*, 5 Rob. 88. This view has the support of the older text-writers. See 1 KENT COMM., § 125; POLSON, LAW OF NATIONS, 47. Compare the executive settlement of *The Wilhelmina*, PYKE, LAW OF CONTRABAND OF WAR, 189.

WILLS — CONSTRUCTION — GIFT TO A CLASS — DEVISE OF REMAINDER TO TESTATOR'S LIVING CHILDREN. — The testator devised land to his son for life, remainder in equal shares to his "living daughters." The son and three daughters survived the testator. Two of the daughters predeceased the son, and on his death the surviving daughter conveyed to the defendants. The plaintiffs, issue of one of the deceased daughters, brought ejectment to recover their mother's undivided interest. *Held*, that the plaintiffs recover. *Kohl* v. *Kepler*, 67 Pitts. L. J. 721.

The case turned on the question whether the word "living" referred to the time of the death of the testator or of the son. In direct and immediate gifts to a class, the class is determined at the time of the testator's death, unless a different intention appears from the will. *Davis* v. *Sanders*, 123 Ga. 177, 51 S. E. 298; *In re Ruggles' Estate*, 104 Me. 333, 71 Atl. 933. This is true even though the distribution is postponed to a later period. *Chasmar* v. *Bucken*, 37 N. J. Eq. 415. In the case of a gift by way of remainder or executory devise to a class described as the testator's heirs, next of kin, or relatives, the class is likewise to be ascertained at his death, not at the termination of the intervening estate. *Bullock* v. *Downes*, 9 H. L. Cas. 1; *Kellett* v. *Shepard*, 139 Ill. 433, 28 N. E. 751; *Boston Safe Deposit & Trust Co.* v. *Parker*, 197 Mass. 70, 83 N. E. 307. Where the gift is to the children, the same rule applies; the children *in esse* at the death of the testator take a vested interest in the remainder, subject to open up and let in those born afterward, before the time of distribution. *McLain* v. *Howald*, 120 Mich. 274, 79 N. W. 182; *Haug* v. *Schumacher*, 166 N. Y. 506, 60 N. E. 245; *Inge* v. *Jones*, 109 Ala. 175, 19 So. 435. The law prefers to construe a remainder as vested rather than as contingent. *Whall* v. *Converse*, 146 Mass. 345, 15 N. E. 660; *Doe* v. *Spratt*, 5 Barn. & Ad. 731. The rule accords with the presumed intention of the testator by preventing the disinheritance of the issue of a remainderman who may die during the existence of the preceding estate. *Hersee* v. *Simpson*, 154 N. Y. 496, 48 N. E. 890. The word "living" in the principal case may be applied with equal force to the time of the death of the testator as to that of the son. It was proper, therefore, for the court to follow, as it did, the general rules of construction outlined above.

BOOK REVIEWS

THE LAW AS A VOCATION. By Frederick J. Allen. With an introduction by William Howard Taft. Cambridge: Harvard University. 1919. pp. viii, 83.

A small book presenting, as its preface promises, a "clear, accurate and impartial study of the law," in order to assist the choice of those inclining to enter the profession, would be a miracle if wholly successful. To cover the subject in so few words is impossible; and this work is rather a section of a

University Handbook apprising students of what they must encounter than an exposition of the soul of a profession.

To a hardened lawyer it has the interest of indicating how he looks to others; something we have for centuries been accustomed to at the hands of satirical poets and novelists, — to be examined by a modern professor has the merit of novelty.

Yet the work is legal, and put together with skill; and like most legal work, it is made up of fact and opinion. The facts relate to what preparation for the profession is necessary, what lawyers may do, how most of them occupy their time, how much they get for it, and what is the present status and tendency of the profession as a whole. The opinions cover a wide range, relating for the most part to professional ethics, the future of the bar under the manifestly changing conditions of American society, and the human qualities which make for or against professional success.

The facts are sufficiently full for the purpose of publication, and accurate in the main, though minor errors and deficiencies are not infrequent. From a list of the various sorts of lawyers (p. 5) is omitted what in the great cities is now the dominating professional figure, — that business guide, or *agent d'affaires*, vulgarly known as the "corporation lawyer."

Again, an appeal from the United States District Court to the Supreme Court (p. 9) is rare indeed, and it would be hard to discover in the scheme of federal jurisprudence any tribunal officially denominated an "Admiralty Court" (p. 10). If it were true that such officers as Registers of Deeds and of Probate, and Clerks of Court, were, the country over, holding offices "based on legal training" (pp. 11 and 18), we should be enjoying a counsel of perfection. It is certainly no longer true that the average attorney is "occupied mainly by litigation" (p. 12); there is not enough of it to go round, and attorneys general of states do not *usually* take personal charge of the trial of even the more important cases (p. 15). The charge, in days before law schools were in the ascendancy, for study in the office of eminent counsel is understated; forty years ago the Philadelphia charge was usually $100, and frequently $150 (p. 47); indeed in some regions the school gained students, by what would now be called "rate-cutting."

If it be useful to deter the student by the mere size of the fraternity he aspires to join, it is a more serious matter that the latest and best figures were not used. Totals at second-hand from the census of 1900, as to the number of American lawyers, are given at p. 66, — instead of the returns for 1910. The far more careful investigations of the last census showed rather less than 108,000 men and women who even called themselves practicing lawyers, and of them nearly 300 were under the age of twenty. "Judges, justices and magistrates" accounted for some 6800 more, of whom it is amusing to note that seven had not attained their majority.

Nor was there any necessity for resting on an "estimate" that New York City contained 12,000 lawyers; there were in 1910 about 10,500 who even claimed that title. Again, there is no excuse for carrying into a book of elementary information such a statement as that "the great majority of both Houses of Congress and of most state legislatures are lawyers by profession" (p. 71). It is doubtless the prevailing opinion that the profession exercises a dominant influence in most legislative bodies; but the mere number in the present Congress who even think it worth while to refer to their legal training in the Congressional Directory constitutes scarcely three fifths of the whole; while in the present legislature of New York the proportion of lawyers to non-lawyers is as seven to eighteen. It is a marked sign of the times, that while it is still true that the most distinguished legislative body in the country, the national Senate, is composed principally of lawyers, the number in legislative bodies generally has for years been relatively decreasing.

The book over-displays the ancient bugaboo of a crowded profession, but with that exception the facts presented are useful, timely, and substantially accurate; nor is there any other publication which even attempts the information.

When it comes to opinion about a lawyer's life and the prospects either of an individual or the profession generally, there is a marked contrast between the tone of President Taft's introduction and the spirit of the text. The former points to the formulation and practical application of the ideals formed or greatly advanced by the World War as lawyers' work, and spiritedly suggests that the student of to-day may be that lawyer of to-morrow fit "to lead in the real progress of a nation." The text apparently acquiesces in an opinion inclining toward belief, that what used to be the profession of the law is to-day for the most part "law-business" (pp. 32 and 73). It yields much space to the Cassandra utterances of one of the New York Lawyers' Associations, which declare "every branch of the profession" threatened by a species of "law-corporation" which extinguishes the "individuality of the lawyer . . . and almost every valuable attribute of his office" (p. 74), and holds the profession itself responsible for that "American disregard of the law" (p. 70) asserted but not defined.

This is the principal criticism of an otherwise valuable publication. Its tone is too somber; it fails to point out that the profitable practice of every profession as distinct from a trade is and always has been difficult; while the law affords far more numerous avenues of escape than do most other professions, because preparation for it is more useful in other walks of life than is the study of more highly specialized sciences; and it fails entirely (and perhaps designedly) to paint the attractive side of an occupation which if followed professionally and with even moderate success is singularly independent, and if used as a portal whereby to enter commercial or corporate business, frequently gives opportunity for entrance by the "cabin window" rather than the "hawse-pipe."

Professional ethics are treated for the most part by reference to the code of the American Bar Association, an admirable document, but which, after all, is and never can be more than an expansion of the oldest form of professional oath still used in this country, — that prescribed by the Assembly of Pennsylvania in 1752, whereby the applicant for admission swore to a promise "to behave yourself in your office of attorney according to the best of your learning and ability; and with all good fidelity as well to the court as to the client. You will use no falsehood nor delay any man's cause for lucre or malice."

The practitioner who adheres to the spirit and the letter of this oath is an "officer and a gentleman," — in the language of another and even more ancient profession.

The most original work in the book, and most valuable for one seriously contemplating strictly professional activities, is the study of those mental qualifications and character traits which may be discovered even in the young, and emphatically make for success at the bar (pp. 23–24).

It is of course true that what the writer calls the "necessary fundamental qualities," — integrity, persistence, judgment, self-confidence, and concentration, will probably insure success in any walk of life. It is the secondary qualities, such as tact, decision mingled with caution, and the like, that turn the scale toward the bar; and of these secondary qualities a long observation of lawyers successful and worthy of success would lead one to put in the foremost place what the writer calls the "gift of sympathy to take the part of a client properly." Almost any one can learn in the old phrase "to strive mightily" in court; but there is a vast difference between the man who strives by main force and the one who strives sympathetically. The young man who feels (and he soon learns to know the feeling) that he cannot like every client he

would like to have, may find delightful and even lucrative professional occupation; but he will rarely if ever rise to the higher planes of advocacy.

The book further does a real service in drawing attention, even if in a somewhat alarming way, to the existing dangers of practice and those which threaten the profession's future. It is true that the commercializing of life has, especially in the very large cities, made the law so profitable a trade as to submerge the professional instinct; and it having always been true that legal opportunities cluster around commercial expansion, the cities tend to swallow up the rising men of smaller communities. It is also true that more than one tenth of the active bar of the United States works in whole or in very large part within fifty miles of the City Hall of New York; but there is nothing new in kind about all this. It is all very old, only the degree requires watching, and youth well advised is forearmed when forewarned.

The profession is and always has been, for every man, what he chooses to make it, if he makes anything of it. It lies with the man himself whether he will graduate into a Sampson Brass, ultimately join the firm of Quirk, Gammon & Snap, or be listened to with friendly respect whenever he chooses to speak before the most admired and eminent magistrate in his community, — this might have been more insistently set forth.

Yet the modest volume fulfills its main purpose; for the youth who thinks he would like to be a lawyer will be moved by its reading to think again, and will more carefully question that friend or relative whose apparently fortunate position was the probable source of inclination; while the lad, impartial and not very determined, who surveys the list of human occupations looking for a congenial and not too engrossing job, will hardly be induced to study law by the perusal of this handbook — all of which is good for the profession and the country.

CHARLES M. HOUGH.

NEW YORK.

A PRACTICAL TREATISE ON TITLE TO REAL PROPERTY, INCLUDING THE COMPILATION AND EXAMINATION OF ABSTRACTS, WITH FORMS. By George W. Thompson. Indianapolis: Bobbs-Merrill Co. 1919. pp. iii, 1112.

This book raises an interesting question of title by accession. The writer has combined his materials and labor with those of Mr. George W. Warvelle, the author of the well-known treatise on "Abstracts and Examinations of Title to Real Property," apparently without any authorization by the latter. The book is substantially a paraphrased edition of Warvelle's work, issued under a more pretentious name. The order of chapters follows exactly that of Warvelle, and the section headings are practically the same, with slight variations and transpositions. No acknowledgment is made of the author's indebtedness to Warvelle beyond the following statement in the preface: "In the preparation of this work the author has combined his own experience with the experience of a number of eminent conveyancers and lawyers, with whom he has been privileged to consult, and to whom he acknowledges many obligations for advice and suggestions."

This generous acknowledgment is itself substantially lifted from Warvelle's Preface. With the author's genius for "combining" his own work with that of others, or, one might say, "grafting" it upon that of others, one wonders whence he derived the inspiration for the additions which he has made to Warvelle in chapters XXXII, XXXIII, and XXXIV, in which he has added a digest of statutes pertaining to the execution and acknowledgment of deeds, a digest of statutes of descent, and a digest of statutes of wills. He has also added a brief chapter on Registration of Title Under the Torrens System.

The author, or one may perhaps call him editor, has somewhat elaborated